IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 13, 2000

TAUNYA MARTIN v. APPEALS TRIBUNAL, TENNESSEE DEPARTMENT OF EMPLOYMENT SECURITY

Appeal from the Chancery Court for Davidson County
No. 97-304-III Ellen Hobbs Lyle, Chancellor

No. M1997-00184-COA-R3-CV - Filed February 26, 2003

This appeal involves a worker's attempts to obtain unemployment compensation benefits. After the Department of Employment Security's Board of Review upheld the denial of her claim, the employee filed a pro se petition for writ of certiorari in the Chancery Court for Davidson County seeking judicial review of the denial of her claim. The Department moved to dismiss the petition because the employee had failed to name all the parties required by Tenn. Code Ann. § 50-7-304(i)(1) (Supp. 1998) (superseded 1999) and failed to state a claim upon which relief could be granted. The trial court granted the Department's motion and dismissed the petition. The employee has appealed. While we concur that the employee's petition failed to name all the required parties, we have determined that dismissing the petition was not the proper remedy. We have also determined that the employee's petition states, albeit inartfully, a ground upon which relief could be granted. Accordingly, we vacate the dismissal of the employee's petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated and Remanded

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Taunya Martin, LaMesa, California, Pro Se.

Paul G. Summers, Attorney General and Reporter, and Douglas E. Dimond, Assistant Attorney General, for the Tennessee Department of Employment Security.

OPINION

I.

Taunya Martin worked as a surgical technician at Baptist Hospital in Memphis from 1982 to late 1995. According to Ms. Martin, she left her job at Baptist Hospital because of complications with her diabetes. Thereafter, she went to work as an obstetrics technician at Methodist Hospital. She anticipated that the job would be easier than her previous job. However, she left that job in June 1996 because she decided that "the job was too strenuous and the hours were too long." After leaving Methodist Hospital she worked for approximately one month as a receptionist/data entry

clerk at Foxcraft Trailers, Inc. in Memphis. That short stint ended when Ms. Martin married and moved to San Diego, California with her new husband.

Ms. Martin applied for unemployment benefits in Tennessee. Citing Tenn. Code Ann. § 50-7-303(a)(1) (1991) (replaced 1999), Ms. Martin asserted that she was entitled to benefits because she had left her employment at Methodist Hospital for health reasons. The Department of Employment Security's Division of Unemployment Insurance[1] disagreed and denied Ms. Martin's claim. Thereafter, Ms. Martin unsuccessfully appealed to the Appeals Tribunal and the Board of Review.

On January 27, 1997, Ms. Martin, now residing in California, filed a pro se petition in the Chancery Court for Davidson County seeking judicial review of the denial of her unemployment compensation claim. The Department of Employment Security did not respond for eights months and eventually filed a motion to dismiss asserting that Ms. Martin had failed to join her former employers as necessary parties and had failed to allege any of the grounds for relief in Tenn. Code Ann. § 50-7-304(i)(2). Over Ms. Martin's objection, the trial court granted the Department's motion and dismissed the petition. This pro se appeal by Ms. Martin followed.

II.
FAILURE TO JOIN NECESSARY PARTIES

We turn first to the consequences of Ms. Martin's failure to comply with Tenn. Code Ann. § 50-7-304(i)(1)'s direction to name as defendants "any other party to the proceeding before the board [of review]."[2] There is no dispute that the only defendant Ms. Martin named in her petition for writ of certiorari was the "Appeals Tribunal, Tn Dept. of Employment Security." She did not name Baptist Hospital, Methodist Hospital, or Foxcraft Trailers, Inc. as defendants. Thus, the only question to be decided here is whether peremptory dismissal of her petition is the proper remedy for her mistake.

The fact that Ms. Martin is representing herself and is untrained in the law should not control the answer to this question. Parties who undertake to represent themselves are entitled to fair and equal treatment by the courts. *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000); *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997). They are not, however, entitled to shift the burden of litigating their case to the courts, *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988), and the courts may not prejudice the rights of other parties in order to be "fair" to parties who are representing themselves. *Hodges v. Attorney General*, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000). Accordingly, the courts should not excuse pro se litigants from complying with the same substantive and procedural rules that

[1] After the trial court's decision in this case, the Tennessee General Assembly enacted the Tennessee Workforce Development Act of 1999 which integrated the Department of Employment Security and the Department of Labor into the Department of Labor and Workforce Development. See Act of May 27, 1999, ch. 520, 1999 Tenn. Pub. Acts 1279.

[2] In addition to the "original claimant or applicant for benefits," Tenn. Code Ann. § 50-7-304(i)(1) defines parties as "each and every employer from whom such claimant received, during such claimant's base period, any wages for insured work, whether or not any such party appeared and participated in the proceeding before the board." The statute also makes clear that "all such parties shall be deemed necessary parties to any petition for certiorari filed pursuant to this subsection."

represented parties are expected to observe. *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n. 4 (Tenn. Ct. App. 1995).

Over ten years ago, we first confronted the question of the consequences of an employee's failure to name as defendants all the persons identified in Tenn. Code Ann. § 50-7-304(i)(1). The Department convinced a trial court that the employee's petition should be dismissed because a "necessary and indispensable party" had not been made a defendant within thirty days after the Board of Review's decision became final. This court reversed. We held that the omitted employer could be added as a defendant to an otherwise timely petition as long as the employer knew about the employee's original application for unemployment benefits. Accordingly, we vacated the dismissal of the employee's petition and remanded the case with instructions to obtain the administrative record to determine "whether the proposed additional party had due notice of the administrative proceedings." *Buckner v. Hayes*, No. 01A01-9203-CH-00096, 1992 WL 181708, at *5 (Tenn. Ct. App. July 31, 1992) (No Tenn. R. App. P. 11 application filed).[3]

Our decision in *Buckner v. Hayes* is consistent with other decisions in which we have declined to dismiss a petition for certiorari simply because all the required persons were not named as defendants. We have held that as long as the petition itself was timely filed, the omission of a necessary party could be cured by a later amendment – even an amendment filed after the deadline for filing the petition had passed. *Levy v. Board of Zoning Appeals*, No. M1999-00126-COA-R3-CV, 2001 WL 1141351, at *6-7 (Tenn. Ct. App. Sept. 27, 2001) (No Tenn. R. App. P. 11 application filed) (permitting a landowner to amend his petition to name an overlooked neighboring landowner); *Shelby County Gov't v. Taylor*, Shelby Eq. No. 40, 1986 WL 13430, at *4 (Tenn. Ct. App. Dec. 1, 1986) (No Tenn. R. App. P. 11 application filed) (permitting the county to amend its petition to name the terminated employee).

Our decisions in these cases light our path here. Chief among the principles undergirding these decisions is the principle that procedural rules should be construed to enhance, rather than impede, the search for justice and to avoid legal technicalities and procedural niceties. *Doyle v. Frost*, 49 S.W.3d 853, 856 (Tenn. 2001); *Johnson v. Hardin*, 926 S.W.2d 236, 238-39 (Tenn. 1996). Thus, in the absence of prejudice, procedural rules should not be used to thwart the consideration of cases on their merits. Tenn. R. App. P. 1; Tenn. R. Civ. P. 1; *Davis v. Sadler*, 612 S.W.2d 160, 161 (Tenn. 1981); *Wallace v. Wallace*, 733 S.W.2d 102, 106 (Tenn. Ct. App. 1987).

We conclude that the trial court erred by denying Ms. Martin's petition simply because she failed to name her former employers as defendants. Instead, consistent with *Buckner v. Hayes*, the trial court should have ordered the Department to file the administrative record to enable the trial court to determine whether these employers had notice of her original claim for unemployment benefits. If they did, the trial court should have directed Ms. Martin to add them as defendants.

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[3] This court has returned to the question of the effect of non-compliance with Tenn. Code Ann. § 50-7-304(i)(1) on only one other occasion. In that case, we simply affirmed the trial court's dismissal of the employee's petition for failure to file a timely response to the Department's motion to dismiss. We noted, in dicta, that base period employers are necessary parties to the chancery court proceeding. *High v. P.D.Q. Disposal, Inc.*, No. M1999-02310-COA-R3-CV, 2001 WL 327895, at *2 (Tenn. Ct. App. Apr. 5, 2001) (No Tenn. R. App. P. 11 application filed).

Accordingly, we vacate the trial court's dismissal of Ms. Martin's petition on the ground that she omitted parties required by Tenn. Code Ann. § 50-7-304(i)(1).

III.
THE ADEQUACY OF MS. MARTIN'S CLAIM

The trial court also dismissed Ms. Martin's petition because it "failed to allege any of the grounds for review provided by [Tenn. Code Ann. § 50-7-304(i)]." Reviewing this decision requires us to interpret the language in Ms. Martin's petition using the rules governing the judicial construction of pleadings and other papers filed with the courts. This exercise is a legal rather than a factual one; therefore, we need not defer to the trial court.

The cardinal rule of construction is that all pleadings shall be construed as to do substantial justice. Tenn. R. Civ. P. 8.06; *Lamons v. Chamberlain*, 909 S.W.2d 795, 800 (Tenn. Ct. App. 1993). The rules no longer require technical forms of pleadings. Tenn. R. Civ. P. 8.05; *Bennett v. Howard Johnsons Motor Lodge*, 714 S.W.2d 273, 280-81 (Tenn. 1986). Accordingly, a pleading is legally sufficient when, by a fair and natural construction, it shows a cause of action or defense. *Paduch v. Johnson City*, 896 S.W.2d 767, 769 (Tenn. 1995). The courts liberally construe pleadings challenged by a motion to dismiss, *Stein v. Davidson Hotel*, 945 S.W.2d 714, 716 (Tenn. 1997), and give effect to their substance rather than their form. *Kaylor v. Bradley*, 912 S.W.2d at 731; *Brown v. City of Manchester*, 722 S.W.2d 394, 397 (Tenn. Ct. App. 1986).

While the courts do not make a habit of excusing pro se litigants from applicable substantive and procedural rules, we do give them a certain amount of leeway in drafting their pleadings and briefs. *Whitaker v. Whirlpool Corp.*, 32 S.W.3d at 227. Accordingly, we measure their papers using standards that are less stringent than those applied to papers prepared by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9-10, 101 S. Ct. 173, 176 (1980); *Winchester v. Little*, 996 S.W.2d 818, 824 (Tenn. Ct. App. 1998). Even though we cannot create claims or defenses for pro se litigants where none exist, *Rampy v. ICI Acrylics, Inc.*, 898 S.W.2d 196, 198 (Tenn. Ct. App. 1994), pro se litigants are entitled to at least the same liberality of construction of their pleadings that Tenn. R. Civ. P. 7, 8.05, and 8.06 provide to other litigants. *Irvin v. City of Clarksville*, 767 S.W.2d at 652.

In this case, the Department makes a shallow, conclusory argument that Ms. Martin's certiorari petition "did not distinctly state any of the [statutory] grounds for review." That argument exalts form and completely ignores substance. When we turn to Ms. Martin's papers, we discover that she alleges that the Appeals Tribunal erred in its finding of facts. Specifically, she disputes the conclusion that Foxcraft Trailers, Inc. was her most recent employer on two grounds. First, she points out that Tenn. Code Ann. § 50-7-303(b)(1)(C) defines "most recent work" as the employer where the employee last worked and earned wages equaling or exceeding ten times the unemployment weekly benefit amount.[4] Ms. Martin disputes that during her month at Foxcraft Trailers she earned enough for that company to be considered her last employer.

[4] *See* Tenn. Code Ann. § 50-7-301(b)(1) (1991) (superseded 1999) (setting out the table of weekly benefit amounts).

Secondly, again relying on Tenn. Code Ann. § 50-7-303(b)(1)(C), Ms. Martin insists that Foxcraft Trailers should not be considered her most recent employer because she was not working in her "chosen profession" while employed there.[5] She insists that her chosen profession is working as a surgical technician and, therefore, that her brief employment with Foxcraft Trailers as a receptionist/data entry clerk should not count. For purposes of claiming unemployment compensation benefits, Ms. Martin argues that her most recent employer was Methodist Hospital.

Unlike the Department and the trial court, we have no trouble finding that Ms. Martin's petition states sufficient grounds for judicial review. Looking past purely matters of form and concentrating instead on the substance of her petition, we find that Ms. Martin has effectively alleged either that the Board of Review's denial of her claim is in violation of statutory provisions or that the Board's conclusion that Foxcraft Trailers was her last employer is unsupported by substantial and material evidence. *See* Tenn. Code Ann. § 50-7-304(i)(2)(A) and (E).

We hasten to add that our holding – that Ms. Martin has stated a claim for which review can be had – carries with it no intimation that her stated claim has merit. We have not examined the administrative record. Today, we go no further than to give effect to Ms. Martin's petition. Therefore, we pretermit Ms. Martin's arguments that the Department should have awarded her benefits. That will be for the trial court to determine.

IV.

We vacate the order dismissing Ms. Martin's petition and remand the case to the trial court for further proceedings consistent with this opinion. We tax the costs of this appeal to the State of Tennessee.

WILLIAM C. KOCH, JR., JUDGE

[5] Tenn. Code Ann. § 50-7-303(b)(1)(C) provides that "[s]hort term employment shall be considered most recent work if such employment is traditionally a part of the claimant's chosen profession."